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COURT USE ONLY  
SAN DIEGO SUPERIOR COURT  
APR 19 2005  
OF THE SUPERIOR COURT  
T. ABAS

NUMBER 4393/4394	COMPLAINT DATE	HEARING DATE 04/15/05	HEARING TIME 01:30PM	DEPT 63	FILED APR 19 2005 SAN DIEGO SUPERIOR COURT
JUDGE/COMMISSIONER HON. LUIS R. VARGAS	CLERK T. ABAS				CLERK OF THE SUPERIOR COURT T. ABAS
REPORTER LOIS MASON P.O.BOX 120128, SAN DIEGO, CA 92112-0128				CSR #	
PLAINTIFF/PETITIONER SPECIAL TITLE KRYPTONITE LOCK CASE,e				DEFENDANT/RESPONDENT INGERSOLL-RAND COMPANY LTD	
ATTORNEY FOR PLAINTIFF/PETITIONER FRANCIS A. BOTTINI (1)				ATTORNEY FOR DEFENDANT/RESPONDENT SIMONA G STRAUSS	

THIS MATTER HAVING COME BEFORE THE COURT THIS DATE, THE COURT ORDERS:

- [illegible]

Plaintiffs' Motion for Class Certification is denied without prejudice.

Due to the procedural problems related to the coordination of the proposed California class with the class action in Illinois, Plaintiffs' motion for class certification must be denied. Presently pending is a nationwide class action in Illinois state court involving the same Kryptonite tubular locks at issue in this action. In December 2004, the Illinois court certified a nationwide class for settlement purposes. (See Defendants' Ex. B, ¶2.) The date by which opt-outs of the nationwide class had to be postmarked was April 11, 2005. The Final Certification hearing of the Illinois settlement is scheduled for April 18, 2005. The timing of the deadlines contained in the order of the Illinois Court are the crux of the procedural intricacies.

The first option considered is granting of the motion for certification allowing certification of a California class despite the pending nationwide class settlement in Illinois. Defendants' argue pendency of the Illinois action is not a basis to deny certification in California. In support, Defendants' cite *Illinois v. Harper & Row Publishers, Inc.* (N.D. Ill 1969) 301 F. Supp.484 for the proposition a court may certify a state class deposited the pendency of an

Dated:

JUDGE/COMMISSIONER OF THE SUPERIOR COURT

already certified nationwide class. There are distinctions between the *Illinois* classes and the proposed class here. First, in *Illinois*, notice had not yet gone out and the opt-out date had not yet passed. Therefore, the administration of the overlapping classes was dealt with in efficient manner. In this case, notice of the nationwide class and the date to opt-out have already passed, giving this Court none of the procedural leeway which was afforded the court in the *Illinois* case.

An additional problem inherent in the previous scenario is the inconsistency of overlapping class. Even if Plaintiffs' proposed class were certified, the result would be a redundant and superfluous class. At this point, Plaintiffs' ability to opt-out a California class has been compromised by the passing of the opt-out deadline of the nationwide class in *Illinois*. To allow certification of a California class at this juncture could result in inconsistencies.

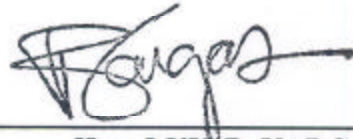
Furthermore, Plaintiffs have not presented any authority for the proposition Plaintiffs' counsel could opt all California consumers out of the nationwide class. At this point, all persons within the class definition, other than those who have properly opted out, are part of the nationwide class. The class representative or class counsel for the California class cannot opt-out an entire class of consumers, especially after notification and certification of an encompassing class has already been provided. (See, e.g. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011.) To allow otherwise would result in incongruous results and a process without finality in addition to detracting from the comity afforded to other jurisdictions.

The second option would be to grant certification only as to California consumers who have opted out of the nationwide class. Based upon the statements of counsel for Defendants, only 24 opt-outs have been received by the Illinois Court. Counsel for Plaintiffs referenced an additional opt-out with 45 names at the hearing on April 15, 2005, however, there is no evidence the opt-out was procedurally correct or that it was postmarked by April 11, 2005. Plaintiffs had an opportunity to meet and confer with Defendants regarding the number of opt-outs and instead, chose to wait until the date of oral argument on this motion to present the additional opt-outs. Of the 24 opt-outs received by the Illinois Court as the time of the present hearing, eight indicated they want no part in any litigation involving the Kryptonite locks. Thus, based upon the figures available at the hearing, Plaintiffs have not shown joinder of 16 plaintiffs is not impractical. Even including the additional 45 opt-outs, Plaintiffs have not shown the joinder of 61 plaintiffs is not impractical and that class action would be superior.

Plaintiffs may renew their motion for class certification following the outcome of the Final Fairness Hearing in the Illinois court.

**IT IS SO ORDERED**

**Dated:** 04-19-05

A handwritten signature in black ink, appearing to read "Luis R. Vargas", written over a horizontal line.

**Hon. LUIS R. VARGAS**  
**Judge of the Superior Court**